

STATE OF MICHIGAN
COURT OF APPEALS

CHURCH OF CHRIST OF NEW BOSTON,

Plaintiff-Appellant/Cross-Appellee,

v

ERNA GILL, HENRY DROILLARD,¹ REX
LEYMAN and DONALD FECAY,

Defendants-Appellees/Cross-
Appellants.

UNPUBLISHED

April 23, 2002

No. 228430

Wayne Circuit Court

LC No. 98-813092-CZ

Before: Cooper, P.J., and Hood and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting defendants' motion for summary disposition and denying plaintiff's motion for summary disposition. Defendants cross-appeal. We affirm.

This case involves a dispute among church members. The Church of Christ of New Boston is a Michigan non-profit ecclesiastical corporation. The church's Articles of Association (the Articles) provide that "[t]he members of the said church shall worship and labor together as provided in the New Testament which shall be the only rule of faith and practice of said church" The Articles further provide that "the temporal affairs of this corporation shall be vested in three (3) trustees who shall be elected by and from the membership annually" However, the corporation may not sell, convey or mortgage its real property or amend the Articles without an affirmative vote of two-thirds of the membership.

Plaintiff argues on appeal that the circuit court erred in granting defendants' motion for summary disposition and dismissing the case. Plaintiff contends that it is entitled to a permanent injunction prohibiting defendants Erna Gill and Donald Fecay from entering the premises of the Church of Christ of New Boston. Specifically, plaintiff claims that this is because defendants

¹ Although this Court's docket sheet and the caption on the final order in this case indicate that this defendant's name is spelled "Droillard," throughout the lower court record, his last name is spelled "Drouillard."

Gill and Fecay were properly “disfellowed” from the congregation. Plaintiff further maintains that an order should be entered requiring defendants to return church property that they took and converted to their own use. On cross-appeal, defendants purport that the circuit court erred in failing to grant them control of the disputed church property.

The circuit court did not specify the court rule it relied on to reach its decision. However, it appears from the record that the circuit court granted defendants’ motion for summary disposition and dismissed plaintiff’s claims on the grounds that it lacked subject matter jurisdiction, MCR 2.116(C)(4). This Court reviews de novo a trial court’s decision on a motion for summary disposition. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). On review, this Court must determine whether the pleadings demonstrate that the moving party was entitled to judgment as a matter of law or if the affidavits and other proofs show that there was no genuine issue of material fact. *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000).

The First and Fourteenth Amendments of the United States Constitution, and art 1, § 4 of the Michigan Constitution of 1963, severely restrict the federal and state courts’ ability to resolve disputes between a church and its members. *Maciejewski v Breitenbeck*, 162 Mich App 410, 413-414; 413 NW2d 65 (1987). The courts’ jurisdiction is “limited to property rights which can be resolved by application of civil law.” *Id.* at 414. A court loses jurisdiction if it must address issues requiring the application of religious doctrine or ecclesiastical polity. *Id.* “Religious doctrine refers to ritual, liturgy of worship and tenets of the faith[,]” while “[p]olity refers to organization and form of government of the church.” *Id.*

Plaintiff contends that because a court may not interfere in the ecclesiastical affairs of religious organizations, the circuit court erred in considering whether plaintiff’s actions relative to defendants Gill and Fecay were proper. Rather, plaintiff opines that the circuit court was bound to respect and uphold its “disfellowship” of defendants Gill and Fecay by entering a permanent injunction prohibiting them from returning to the Church of Christ of New Boston.

We find that the heart of the dispute in this case centers on the identity of the Church of Christ of New Boston. Plaintiff essentially claims that those who continue to attend and worship at the Church of Christ of New Boston under the direction of Minister Trieber Acre constitute the congregation. In contrast, defendants claim that the “disfellowed” members and their followers comprise the Church of Christ of New Boston. Defendants maintain that they have validly elected three new church trustees; whereas, plaintiff claims that the election was invalid. Further, defendants disagree with plaintiff’s claim that the majority of the church supports the disfellowship actions.

Both sides produced affidavits and “membership lists” in support of their respective positions. Defendants insist they have provided proof that they represent the majority because they are supported by the majority of the members listed on the membership roll at the time the “schism” in the congregation developed. However, plaintiff purports that the membership roll referenced by defendants is an inaccurate representation of the church’s active members. Plaintiff asserts that defendants counted children who, according to plaintiff, do not have a vote on church matters. Plaintiff further contends that people who are attending a different congregational church, even if they attended the Church of Christ of New Boston at one time, may not be counted as members for the purpose of establishing a majority. However, defendants

maintain that children and members who once attended, but have not been in recent attendance, may be counted.

Unfortunately, the Articles offer no help in establishing who may become a member of the church. Indeed, the Articles provide that “the New Testament . . . shall be the only rule of faith and practice of said church.” Accordingly, it is not possible for a court to determine which of the parties, if either, is actually the Church of Christ of New Boston without delving into religious doctrine or ecclesiastical polity. See *Maciejewski*, *supra* at 414.

Plaintiff further argues that even if the court lacked jurisdiction to enforce plaintiff’s disfellowship actions, the court did have jurisdiction over the property dispute. As the representative of the church’s majority, plaintiff argues that the circuit court should have granted it relief on its conversion claim. Defendants also contend that the court had jurisdiction to resolve the property dispute. However, according to defendants there was irrefutable proof that they represented the majority and the circuit court should have granted them rightful possession of the church property.

Although a court may determine rights to church property where such can be determined by application of civil law, resolution of the property dispute in this case would require consideration of religious doctrine and ecclesiastical polity. See *id.* In *Bennison v Sharp*, 121 Mich App 705, 714-715; 329 NW2d 466 (1982), this Court distinguished between property disputes within a church that is a subordinate member of a general church organization, or hierarchical church structure, and those within a church that operates independent of other ecclesiastical associations, i.e., congregational form. Thus, if a faction of a subordinate congregation within a hierarchical church secedes, it is not entitled to take property with it. *Id.* at 715. However, where the property is held by an independent or congregational church, ownership of property should be determined by the principles governing voluntary associations. *Id.* at 714.

If the principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the property. If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property. [*Id.*, quoting *Watson v Jones*, 80 US (13 Wall) 679; 20 L Ed 666 (1871) (citation omitted).]

It is undisputed that The Church of Christ of New Boston is an independent or congregational church. However, both parties claim to represent the numerical majority and both argue that they are the church officers entrusted with the powers of control. Moreover, each party maintains that they are following the rules of the church. After a careful review of the record, we find we can not determine which party actually represents the numerical majority, is

in control, or is following the rules of the church, without improperly delving into matters of religious doctrine and ecclesiastical polity. Accordingly, the circuit court did not have subject matter jurisdiction over either parties' property claim and it properly dismissed the case.

Affirmed.

/s/ Jessica R. Cooper

/s/ Harold Hood

/s/ Kirsten Frank Kelly